SDLT – the Hannover case – beware anti-avoidance

When SDLT was first introduced in December 2003 it signalled a shift away from taxing (and literally stamping) documents to a system of taxing underlying transactions, supposedly irrespective of the actual documents used to evidence the transactions.

However, over the years it has become clear that SDLT is still very much a tax on documents. It is still possible to structure the same land transaction (these days involving land in England or N Ireland only) in different ways using different documents and each with a different SDLT outcome. So too is it possible potentially (according to the First-tier Tribunal) to achieve different SDLT outcomes for the same transaction structured on a corporate basis by re-ordering the specific transaction steps.

Corporate transactions, for example the transfer of shares in a company which owns a property as opposed to an outright sale of the property itself is a tax planning measure long accepted by HMRC and which should not trigger any SDLT liability, except in certain circumstances where the transaction may trigger the withdrawal of a previously claimed SDLT relief. Similar arrangements to sell property which involve a corporate structure, but which in part feature a transfer of the subject property itself need careful consideration to see if they achieve the taxpayer's desired SDLT result.

The case of *Hannover Leasing Wachstumswerte Europa Beteiligungsgesellschaft MbH and another v HMRC* [2019] is a recent example of a case where HMRC successfully argued (subject to any further appeal the taxpayer may yet make) that the SDLT anti-avoidance measures should apply. The case involved a series of transactions which ultimately transferred to the buyer an office building for circa £139m. The effect of the application of the anti-avoidance measures was an SDLT bill of just under £5.5m.

The motives behind the transaction structure used were apparently not wholly related to saving tax. Whilst a tax

saving resulted, there were also separate commercial reasons for why the transaction was structured the way it was.

Notwithstanding the corporate nature of the sale, the Tribunal found that it fell foul of the anti-avoidance provisions with the effect that the series of transactions was ignored (and the motive for those was ignored – whether driven by a desire to save tax or not) and instead a notional sale of the property between seller and buyer was deemed to have occurred for the approximate £139m price paid.

The Tribunal noted that potentially it may have been possible to achieve a different SDLT outcome by re-ordering the specific transaction steps – as specifically allowed for by the anti-avoidance provisions. However, unless successfully appealed, the decision stands.

Written by

Simon Schipper

Legal Director